

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

AT&T CORP.

Employer

and

Case 14-UC-194

LOCAL 6350, COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner proposes to clarify the collective-bargaining unit as follows:

...that employees employed in the classifications of Escalation Manager and Local Access Provider Manager are appropriately included within the certified and recognized collective bargaining unit which the Petitioner represents.

3. The Petitioner contends that approximately 106 Customer Service Support Agents, who are bargaining-unit employees, were laid off in January 2003 from the Employer's St. Louis, Missouri facility, and Escalation Managers and Local Access Provider Managers, non-unit employees, have been performing the work of the Customer Service Support Agents exclusively since at least April 2003. The Employer maintains that the work previously

performed by Customer Service Support Agents was either automated or distributed between a facility in Jacksonville, Florida, the Communications Technicians, who are bargaining-unit employees. The evidence discloses that there are approximately 11 Local Access Provider Managers working in the St. Louis facility, and that there are no Escalation Managers at that facility. Escalation Managers are employed in Dallas, Texas, while Local Access Provider Managers are geographically located at St. Louis, Missouri; Atlanta, Georgia; and Detroit, Michigan.

4. Clarification of the bargaining unit is not warranted, as the petition is untimely. The classifications of Escalation Manager and Local Access Provider Manager have been historically excluded from the bargaining unit. The creation of both classifications predate the collective-bargaining agreement effective May 12, 2002 through November 8, 2003. Evidence also shows that, as of June 2003, after the alleged reassignment of duties, the Employer and Communication Workers of America negotiated an extension of the collective-bargaining agreement through December 10, 2005. At no time during these negotiations did the Union attempt to include the disputed classifications in the bargaining unit.

The Board has repeatedly held that, absent circumstances not present here, a unit clarification petition is untimely where it seeks to clarify positions in existence at the time a collective-bargaining agreement was entered into during the term of that agreement. See e.g., *Edison Sault Electric Company*, 313 NLRB 753 (1994); *Textron Lycoming Division*, 308 NLRB 1045 (1992); *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). Here the positions involved in the petition existed in their current form at the time the extension agreement was executed and no claim has been raised of any change in duties since that time. Accordingly, I concluded that the petition is untimely.

ORDER

IT IS HEREBY ORDERED that the unit clarification petition is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **December 15, 2003**.

Dated December 1, 2003
at St. Louis, Missouri

Ralph R. Tremain, Regional Director, Region 14

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